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7 **IN THE SUPREME COURT**
8 **STATE OF ARIZONA**

9 PETITION TO AMEND RULE
10 4(B)(5)(b), ARIZONA RULES OF
11 PROTECTIVE ORDER PROCEDURE

Supreme Court No. R-10-0017

**Comment of the State Bar of
Arizona Regarding Petition to
Amend Rule 4(B)(5)(b), Arizona
Rules of Protective Order
Procedure**

12 The State Bar of Arizona respectfully opposes the Petition to Amend Arizona
13 Rule of Protective Order Procedure 4(B)(5)(b).
14

15 For the following reasons, discussed more fully below, the State Bar of
16 Arizona does not believe that the proposed amendment (to require limited
17 jurisdiction courts to transfer protective orders to the superior court when the
18 protected party is the subject of custody, parenting time, or visitation orders) should
19 be adopted.
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- 21 (1) The proposed rule change may significantly delay the ability of
22 the parent affected by the order to contest *ex parte* restrictions
23 placed on his or her custody and/or parenting time rights due to
24 administrative delay; and
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1 (2) Such a proposed change has the potential for creating unfairness
2 to the opposing party.

3 **THE PROPOSED RULE SHOULD NOT BE ADOPTED**

4 **A. The Proposed Rule Change May Significantly Delay the**
5 **Ability of an Affected Parent to Contest *Ex Parte* Restrictions.**

6 By removing the limited jurisdiction court's authority to hold a hearing on
7 its own *ex parte* protective order affecting a party's custody and/or parenting time,
8 the proposed rule change may significantly delay the ability of the parent affected
9 by the order to contest *ex parte* restrictions placed on his or her custody and/or
10 parenting time rights. This delay would most likely be due to the administrative
11 delays that normally occur when there is a transfer of a matter from one court to
12 another. Based upon the experience of the members of the Family Law Practice
13 and Procedure Committee, it can take two to three weeks to process the
14 administrative transfer of a case from a limited jurisdiction court to the superior
15 court, especially in the larger counties. Accordingly, under the proposed rule
16 change, a party whose custody or parenting time rights have been adversely
17 affected by an *ex parte* protective order may have no ability to redress his or her
18 lack of access to the minor child for quite some time.

19 **B. The Proposed Rule Could Create the Potential for Mischief**
20 **and Cause Unfairness to the Opposing Party.**

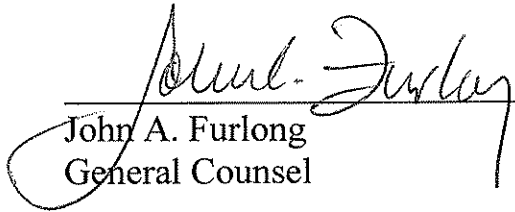
21 Because of the aforementioned delay that often results due to an
22 administrative transfer, it is believed that the *immediate* transfer of a matter to

1 superior court could create the potential for mischief and cause unfairness to the
2 opposing party due to the fact that the opposing party would no longer be able to
3 immediately respond to the issuing court of limited jurisdiction. For example, a
4 party could obtain a protective order on the eve of a holiday and, due to the
5 immediate transfer rule, be faced with a delay of two to three weeks before
6 receiving an opportunity to contest the order in the superior court. Allowing the
7 matter to remain in the court of limited jurisdiction would more likely result in the
8 avoidance of such mischief and unfairness, when on those rare occasions this may
9 occur.
10
11

12 CONCLUSION

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14 Thus, based upon the above-stated reasons, the State Bar respectfully
15 opposes the Petition to Amend Rule 4(B)(5)(b) of the Arizona Rules of Protective
16 Order Procedure.

17 RESPECTFULLY SUBMITTED this 11th day of May, 2010.
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21 
22 John A. Furlong
23 General Counsel
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25 Electronic copy filed with the
26 Clerk of the Supreme Court of
Arizona this 11th day of May, 2010,

1 And a copy was mailed to:

2 The Honorable Elizabeth R. Finn
3 Presiding Judge
4 Glendale City Court
5 5711 West Glendale
6 Glendale, Arizona 85301

7 By: Kathleen Lundgren

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